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AUG 27 2007

OFFICE OF PETITIONS

In re Application of :
Marco Peretti : DECISION ON APPLICATION
Application No. 09/884,921 : FOR
Filed: June 21, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 702265.0007 :
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT IN NOTICE OF ALLOWANCE UNDER 37 C.F.R. § 1.705(b)," filed June 12, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seven hundred fifty-six (756) days to eight hundred seventy-eight (878) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is EIGHT HUNDRED SEVENTY-EIGHT (**878**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 17, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 756 days. On June 12, 2007, applicant timely submitted the instant application for patent term adjustment¹. Applicant states that a Reply to the non-final Office action mailed October 19, 2005 was filed by facsimile on January 19,

¹ PALM records indicate that the Issue Payment was filed on August 17, 2007.

2006 and resubmitted on April 10, 2006. Accordingly, applicant argues that the periods of adjustment and reduction should be based on the response filing date of January 19, 2006. Thus, the period of adjustment would be 41 days and the period of reduction would be 0 days, not 81 days.

Applicant states that this application is not subject to a terminal disclaimer.

Applicant's documentation on application for patent term adjustment (and of record as submitted April 10, 2006) supports a conclusion that the reply should be treated as filed on January 19, 2006, not April 10, 2006. The examiner accepted the reply as timely filed. As the reply to the Office action mailed October 19, 2005, was sent to the Office by facsimile on January 19, 2006, this was within the three-month period set in 37 CFR 1.704(b). Accordingly, no reduction for applicant delay is warranted.

Further, pursuant to 37 CFR 1.702(a)(2) and 1.703(a)(3), a period of adjustment of 41 days is being entered for the Office taking more than four months, until June 29, 2006, to mail a response to the reply filed January 19, 2006.

It is noted that the Reply filed January 19, 2006 was not faxed to the official central facsimile number. Applicant is advised that a Reply sent to an improper facsimile number may in the future be considered a failure to engage in reasonable efforts to conclude processing or examination and/or may not give rise to an Office delay for failing to mail a response within 4 months.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 878 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Thursday
Date: 8/23/2007

Time: 20:48:05

PALM INTRANET

PTA Calculations for Application: 09/884921

Application Filing Date:	06/21/2001	PTO Delay (PTO):	944
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	188
Post-Issue Petitions:	0	Total PTA (days):	878
PTO Delay Adjustment:	122		

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27	10/05/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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